

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jean Paul Lozada	Team: Squad #02	CCRB Case #: 202104505	<input checked="" type="checkbox"/> Force <input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> Discourt. <input type="checkbox"/> O.L.	<input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 07/31/2021 2:53 AM	Location of Incident: Delancey Street - Essex Street subway station		Precinct: 07	18 Mo. SOL 1/31/2023	EO SOL 1/31/2023
Date/Time CV Reported Sat, 07/31/2021 4:15 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 07/31/2021 4:15 PM		

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Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT John Zorrilla	03069	933511	TB DT04
2. POM Jonathan Rivera	27011	965460	TB DT04

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Xavier Reyes	25133	967291	TB DT04
2. LT Augusto Hernandez	00000	935012	TB DT04
3. POM Kenneth Munoz	18791	961967	TB DT04
4. POM Stephen Babin	08730	933627	TB DT04

Witness Officer(s)	Shield No	Tax No	Cmd Name
5. POM Stephen Patti	10817	957939	007 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT John Zorrilla	Force: Sergeant John Zorrilla used physical force against § 87(2)(b)	
B.SGT John Zorrilla	Abuse: Sergeant John Zorrilla threatened to arrest § 87(2)(b)	
C.POM Jonathan Rivera	Abuse: Police Officer Jonathan Rivera threatened to arrest § 87(2)(b)	
D.SGT John Zorrilla	Abuse: Sergeant John Zorrilla searched § 87(2)(b) purse.	

Case Summary

On July 31, 2021, reporting non-witness § 87(2)(b) and numerous other reporting non-witnesses filed this complaint on behalf of § 87(2)(b) via the CCRB's website. Due to media coverage of this incident (Board Review 24-27) and a related incident being investigated in case # § 87(2)(b) (Board Review 21, 28), this case was marked as a sensitive case.

On July 31, 2021, at approximately 2:53 a.m., Sergeant John Zorrilla of Transit Bureau District 4 stopped § 87(2)(b) for entering the Delancey-Essex Streets subway station in Manhattan without paying her fare. § 87(2)(b) refused to give her ID to Sergeant Zorrilla. Sergeant Zorrilla grabbed § 87(2)(b) arm, and § 87(2)(b) attempted to pull away. Sergeant Zorrilla then pulled § 87(2)(b) leg out from underneath her, causing her to fall backwards (**Allegation A – Force: Physical Force**, § 87(2)(g) § 87(2)(b) was handcuffed, and she argued with the officers and continued to refuse to provide her ID. Sergeant Zorrilla and Police Officer Jonathan Rivera of Transit Bureau District 4 told § 87(2)(b) numerous times that she could be taken to the stationhouse (**Allegations B and C – Abuse of Authority: Threat of Arrest**, § 87(2)(g) § 87(2)(b) Sergeant Zorrilla searched through § 87(2)(b) purse and retrieved her ID while she was still handcuffed (**Allegation D – Abuse of Authority: Search of Person**, § 87(2)(g) § 87(2)(b) was ejected from the station with summonses for fare evasion and disorderly conduct issued by Police Officer Rivera (Board Review 01, 02), and Police Officer Rivera told her that she would be arrested if she entered the station again (**within Allegation C**).

Body-worn camera (BWC) footage of the incident was obtained from the BWCs of Sergeant Zorrilla, Police Officer Rivera, and Police Officer Xavier Reyes of Transit Bureau District 4. These videos are saved in IA#242 (Board Review 03) and are summarized in IA#118 (Board Review 04). The incident was also captured in a video filmed by an unknown witness that was posted on various social media platforms. This video is saved in IA#5 (Board Review 05) and is summarized in IA#241 (Board Review 06).

Findings and Recommendations

Allegation (A) Force: Sergeant John Zorrilla used physical force against § 87(2)(b)

§ 87(2)(b) was interviewed via telephone on August 27, 2021 (Board Review 07). Sergeant Zorrilla was interviewed at the CCRB on September 13, 2022 (Board Review 08). Contact attempts were exhausted to § 87(2)(b) a witness to this incident, but the investigation was unable to obtain a statement from her.

It is undisputed that § 87(2)(b) entered the subway system without paying her fare, that she attempted to escape from Sergeant Zorrilla's grip, and that Sergeant Zorrilla then brought her to the floor by pulling her leg out from underneath her, causing her to fall backwards. It is also undisputed that § 87(2)(b) had consumed alcohol prior to the incident.

§ 87(2)(b) stated that she had consumed two alcoholic beverages before entering the station and smelled of alcohol, but she was not "drunk or wasted." Sergeant Zorrilla approached § 87(2)(b) after she crossed the turnstile without paying and said something to her, but § 87(2)(b) was wearing noise-cancelling headphones and did not hear what he said. § 87(2)(b) did not realize Sergeant Zorrilla was a police officer because he was in plainclothes, and she could not see his shield. Believing she was being "catcalled," § 87(2)(b) told Sergeant Zorrilla to "fuck off." Sergeant Zorrilla immediately grabbed § 87(2)(b) arm or bag, and § 87(2)(b) "freaked out" and said, "What the fuck is going on?" § 87(2)(b) tried to wiggle her arm free from Sergeant Zorrilla's grip and used her right shin to try to

push him off of her, at which point Sergeant Zorrilla grabbed and pulled § 87(2)(b) leg, and § 87(2)(b) fell to the floor and landed on her back and her left elbow. § 87(2)(b) realized Sergeant Zorrilla was a police officer once the officers started handcuffing her. She did not mention having fallen to the floor prior to the time when Sergeant Zorrilla pulled her leg. § 87(2)(b) self-reported her height as 5'2" and her weight as 120 pounds.

An AIDED Report was prepared for § 87(2)(b) by Police Officer Reyes (Board Review 28). It states that § 87(2)(b) received a laceration to her left elbow due to a "takedown" and refused medical treatment.

A TRI Report was prepared for this incident by Lieutenant Augusto Hernandez of Transit District 4, listing § 87(2)(b) as the civilian involved and Sergeant Zorrilla as the officer involved (Board Review (30)). It states that while § 87(2)(b) was stopped to be issued a summons, she "became combative by refusing to stop and pushing [the] officer while [the] officer was trying to obtain subject information." § 87(2)(b) "intentionally attempted to leave by attempting to pass rush [through] officer" and was "escorted down to the floor and handcuffed for safety."

In Sergeant Zorrilla's BWC footage (Board Review 09), at runtime 11:28, § 87(2)(b) sneaks under the turnstile, and Sergeant Zorrilla says, "Stand over here." § 87(2)(b) says, "No," and tries to walk past him. Sgt. Zorrilla then grabs her left arm. § 87(2)(b) falls to the floor onto her buttocks. § 87(2)(b) stands up, and § 87(2)(b) brings her to the wall. At runtime 11:58 of Sergeant Zorrilla's BWC footage (Board Review 09) (and at runtime 12:52 of Police Officer Rivera's BWC footage (Board Review 10)), § 87(2)(b) walks toward the turnstile again and says, "If you want me to pay, just fucking say so." Police Officer Rivera is in the process of issuing a summons to § 87(2)(b) who is filming the incident and asking the officers to display their shields for her camera, and Police Officer Reyes is in the process of issuing a summons to a male. Sergeant Zorrilla grabs § 87(2)(b) right arm while asking for her ID. § 87(2)(b) says, "No, fuck you," and appears to try to pull away from his grip.

At this point, as the social media video (Board Review 05) begins (and at runtime 12:20 of Police Officer Zorrilla's BWC footage and runtime 13:10 of Police Officer Rivera's BWC footage), Sergeant Zorrilla tries to sweep § 87(2)(b) right leg out from underneath her with his right foot, but § 87(2)(b) remains standing. Sergeant Zorrilla then grabs and lifts § 87(2)(b) right leg, below the knee, leaving her standing on only her left leg. He then pulls § 87(2)(b) right leg toward him, causing § 87(2)(b) to fall again. She falls backwards off her left leg and lands directly on her back. Sergeant Zorrilla and Police Officer Reyes then handcuff § 87(2)(b). § 87(2)(b) does not appear to use her shin or leg to push Sergeant Zorrilla.

At runtime 13:58 of Police Officer Reyes' BWC footage (Board Review 11), bruises are visible near § 87(2)(b) left elbow as Police Officer Rivera and Sergeant Zorrilla handcuff her. These bruises are also visible at runtime 23:49 of Police Officer Rivera's BWC footage (Board Review 10).

Sergeant Zorrilla stated that he stepped in front of § 87(2)(b) to stop her for fare evasion and issue her a summons. He did not know if he ever identified himself as a police officer, but he noted his shield was visible on his belt. Sergeant Zorrilla told § 87(2)(b) to stand against a wall, and § 87(2)(b) said, "No," and, "Fuck you." Sergeant Zorrilla believed § 87(2)(b) was intoxicated because she was slurring her words. § 87(2)(b) tried to walk away, but Sergeant Zorrilla blocked her path. § 87(2)(b) used her hand to push Sergeant Zorrilla's shoulder, and Sergeant Zorrilla grabbed § 87(2)(b) by her arm and "directed her to the wall." § 87(2)(b) "lost her balance" due to "struggling" and fell to the ground. Sergeant Zorrilla denied deliberately placing § 87(2)(b) on the ground on the first occasion

when she fell to the ground. § 87(2)(b) stood back up, and while Sergeant Zorrilla continued to hold § 87(2)(b) arm, § 87(2)(b) became “combative,” waved her free arm, and told Sergeant Zorrilla to let her go. Sergeant Zorrilla believed it was necessary to place § 87(2)(b) on the ground again because she had shoved him and was not listening to his instructions, and he felt that handcuffing her would de-escalate the situation. Sergeant Zorrilla attempted to perform a “leg sweep” to bring § 87(2)(b) to the floor by using his leg to push § 87(2)(b) leg out from under her, but § 87(2)(b) stepped or jumped over his leg and remained standing. Sergeant Zorrilla then grabbed § 87(2)(b) ankle to bring her to the floor so he could handcuff her. § 87(2)(b) fell sideways and landed on her elbow. Sergeant Zorrilla chose to bring § 87(2)(b) to the floor because he felt there was no other way to restrain her while she was standing due her “violent behavior.” Sergeant Zorrilla did not request assistance from Police Officer Rivera or Police Officer Reyes in controlling § 87(2)(b) because he “had the situation under control.” Sergeant Zorrilla did not recall if the tactic he utilized to take § 87(2)(b) to the ground was a tactic that he had learned in any training. Sergeant Zorrilla self-reported his height as 5’10” and his weight as 165 pounds.

Patrol Guide Procedures 221-01 (Board Review 12) and 221-02 (Board Review 13) state that officers may use force when it is reasonable to ensure officers’ or civilians’ safety, or when it is reasonable to place a person in custody or to prevent escape from custody. Officers’ use of force must be reasonable under the circumstances, and de-escalation techniques, which may reduce or eliminate the need for force by gaining the subject’s voluntary compliance, must be prioritized. Officers shall “apply no more than the reasonable force necessary to gain control,” and excessive force is not tolerated. Factors to be considered in determining whether the use of force is reasonable include the following: the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject, members of service or bystanders; whether the subject is actively resisting custody; whether the subject is attempting evade arrest by flight; the number of subjects in comparison to the number of members of service; size, age and condition of the subject in comparison to the member of service; subject’s violent history if known; presence of hostile crowd or agitators; and whether the subject is apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase likelihood of violence.

Sergeant Zorrilla stopped § 87(2)(b) for not paying her subway fare, and § 87(2)(b) refused to stand against a wall and produce her ID. § 87(2)(b) had consumed alcohol, and Sergeant Zorrilla believed she was intoxicated because she slurred her words. § 87(2)(b) is approximately 5’2” tall and 120 pounds, while Sergeant Zorrilla is approximately 5’10” tall and 165 pounds. Before performing the “leg sweep” that caused § 87(2)(b) to fall onto the ground the second time, Sergeant Zorrilla held § 87(2)(b) with only one arm as she tried to pull away from him, and he did not request assistance from either of his partners. Sergeant Zorrilla only told § 87(2)(b) to stand against the wall and produce her ID, and he did not attempt to verbally engage § 87(2)(b) further before he caused her to fall to the floor directly from a standing position by grabbing and pulling her leg. Given the minor nature of § 87(2)(b) offense, the difference in size between § 87(2)(b) and Sergeant Zorrilla, § 87(2)(b) inebriated state, and Sergeant Zorrilla’s failure to attempt to deescalate the encounter or seek assistance from his partners, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (B) Abuse of Authority: Sergeant John Zorrilla threatened to arrest § 87(2)(b)
Allegation (C) Abuse of Authority: Police Officer Jonathan Rivera threatened to arrest

§ 87(2)(b)

At runtime 16:15 of Sergeant Zorrilla's BWC footage (Board Review 09), § 87(2)(b) refuses to produce her ID for Police Officer Rivera, and Sergeant Zorrilla says, "Guys, don't worry about it. It's cool. We got the car, she can (unclear) or she can go to the precinct." Police Officer Rivera then says, "If you don't give us ID, we're going to have to bring you back to the command," and then Sergeant Zorrilla says, "We'll take her back to the stationhouse, don't worry about it." At 28:52, after officers have retrieved her ID, she has been uncuffed, and Police Officer Rivera is writing her summonses. § 87(2)(b) addresses the officers sarcastically and Sergeant Zorrilla asks § 87(2)(b) if she wants to be handcuffed again and says, "I'll bring you to the stationhouse, and then you can walk from there."

In Police Officer Rivera's BWC footage (Board Review 10), at runtime 34:30, after issuing her the summonses, Police Officer Rivera explains to § 87(2)(b) that she is being ejected from the station and tells her that she will be arrested for trespassing if the officers see her enter the station again.

§ 87(2)(b) stated that after her handcuffs were removed, Sergeant Zorrilla told her he would handcuff her again if she started "acting up," but she did not mention Sergeant Zorrilla threatening to arrest her or take her to the stationhouse.

Sergeant Zorrilla stated that § 87(2)(b) continuously refused to provide her ID, and that he informed her that she would be brought to the stationhouse if she did not provide it. He used his discretion to summons § 87(2)(b) instead of arresting her because issuing summonses and ejecting her from the station was a "less inconvenient" option for § 87(2)(b).

New York State Penal Law section 165.15(3) (Board Review 14) states that a person is guilty of theft of services, a class A misdemeanor, when "with intent to obtain railroad, subway, bus, air, taxi, or any other public transportation service without payment of the lawful charge therefor... he obtains or attempts to obtain such service or avoids or attempts to avoid payment therefor by force, intimidation, stealth, deception or mechanical tampering, or by unjustifiable failure or refusal to pay."

Title 21, Part 1050.4 of the New York Codes, Rules, and Regulations (Board Review 17) states, "No person shall use or enter upon the facilities or conveyances of the [New York City Transit Authority], for any purpose, without the payment of the fare," and Patrol Guide Procedure 212-20 (Board Review 18) states, "Any person who violates any portion of NYCRR Part 1050... is subject to ejection from New York City Transit facilities."

Patrol Guide Procedures 209-09 and 209-12 (Board Review 15, 16) state that an individual being summonsed should be removed to a police stationhouse for investigation if doubt concerning the individual's identify exists.

New York Penal Law section 140.05 (Board Review 19) states that a person is guilty of trespass, a violation, when "he knowingly enters or remains unlawfully in or upon premises."

Although Sergeant Zorrilla opted to issue § 87(2)(b) a summons and release her at the scene, because § 87(2)(b) entered the subway system without paying her fare, § 87(2)(g) also refused to provide her ID to the officers, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (D) Abuse of Authority: Sergeant John Zorrilla searched § 87(2)(b) purse.

It is undisputed that Sergeant Zorrilla retrieved § 87(2)(b) identification from her purse while she was in handcuffs.

§ 87(2)(b) stated that Police Officer Rivera asked for her identification and told her that she could leave if she provided it. However, § 87(2)(b) was in handcuffs and on the floor, so she could not retrieve her ID from her purse, which had fallen to the floor. § 87(2)(b) asked the officers three to four times to remove her handcuffs and hand her the purse so she could get her ID, and the officers repeatedly said they would not do so and told her to calm down. § 87(2)(b) then said, “Well then, please just grab it yourself,” or, “Fine, just go in my bag and grab my ID.” § 87(2)(b) believed the officers deliberately waited for her to give them consent to search her purse. Sergeant Zorrilla “rummaged” through § 87(2)(b) purse and retrieved her ID from her wallet. Police Officer Rivera then wrote § 87(2)(b) a summons and ejected her from the station.

At runtime 17:26 of Sergeant Zorrilla’s BWC footage (Board Review 09), after § 87(2)(b) had refused to produce her ID (see **Allegation B**) Sergeant Zorrilla appears to search through § 87(2)(b) purse while she is in handcuffs. § 87(2)(b) says, “Let go of my bag.” At runtime 17:35, after Sergeant Zorrilla has begun searching the purse, § 87(2)(b) says, “There’s the fucking ID, take it.”

Sergeant Zorrilla stated that § 87(2)(b) said her ID was in her purse, but she never consented for any officer to retrieve it from her purse. Sergeant Zorrilla opened § 87(2)(b) purse and removed her ID. In his interview, Sergeant Zorrilla explained that he used his discretion to not to bring § 87(2)(b) to the stationhouse because summoning her and releasing her from the subway station would be “less inconvenient” for § 87(2)(b). Sgt. Zorrilla explained that he had made the decision to use his discretion to summons § 87(2)(b) instead of arresting her at the beginning of the incident and stuck to this decision throughout the incident, even when the incident escalated. § 87(2)(b) was only detained but, had she been arrested, she would have been searched at the stationhouse, which Sergeant Zorrilla believed justified his search of her purse, as a search incident to a “lawful arrest.”

Patrol Guide Procedure 208-03 (Board Review 31) states that after an arrest has been effected, and the prisoner has been handcuffed, an officer must immediately search/frisk the prisoner and search the adjacent vicinity for weapons, evidence, and/or contraband.

A search conducted incident to an arrest must be incident to an actual arrest, not just to probable cause that might have led to an arrest but did not. People v. Reid, 24 N.Y.3d 615 (2014) (Board Review 20).

§ 87(2)(g)

§ 87(2)(b) Sergeant Zorrilla decided against transporting her to the stationhouse and to instead eject her from the subway station with summonses. He stated that he had made the decision to release § 87(2)(b) with a summons at the beginning of the incident and stuck to this decision throughout their interactions, even as the incident escalated. While officers may search an arrested individual and their property as part of the arrest process, by Sergeant Zorrilla’s own account, while he had probable cause to arrest § 87(2)(b) he searched her bag to retrieve her ID and issue her a summons in

order to *avoid* arresting her, rather than as the procedural part of an actual arrest in progress.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 21).
- Sergeant John Zorrilla has been a member of service for 19 years and has been a subject in 15 other CCRB complaints and 71 other allegations, of which six were substantiated in four cases.
 - 201507072 involved a substantiated Interference with Recording allegation. The Board recommended Command Discipline B, but the NYPD declined to prosecute and imposed no penalty.
 - 201509988 involved substantiated Pepper Spray and Retaliatory Arrest allegations. The Board recommended Command Discipline B, which the NYPD imposed.
 - § 87(2)(g)
 - 202003090 involved a substantiated Threat of Removal to Hospital allegation. The Board recommended Command Discipline B, and the NYPD declined to prosecute and imposed no penalty.
 - Sergeant Zorrilla has had 16 other Physical Force allegations alleged against him in 10 other cases:
 - In 201306582, a Physical Force allegation against Sergeant Zorrilla was closed as complainant unavailable.
 - In 201402854, a Physical Force allegation against him was unsubstantiated (in this case Sergeant Zorrilla allegedly grabbed and squeezed an individual's face/lower chin, pushed her backwards, and then dragged her across the floor by the hood of her sweatshirt).
 - In 202001757, a Physical Force allegation against him was unsubstantiated (in this case an individual attempted to get off the ground, and Sergeant Zorrilla allegedly pushed him back down by placing a knee on his back).
 - In 20202014, two Physical Force allegations against him were closed – pending litigation.
 - In 202002734, a Physical Force allegation against him was closed as complainant unavailable.
 - In 202003090, a Physical Force allegation against him was unsubstantiated (in this case Sergeant Zorrilla allegedly kicked an individual's foot, causing her to fall to the ground).
 - In 202104027, a Physical Force allegation against him was closed as alleged victim uncooperative.
 - A total of eight Physical Force allegations have been pleaded against Sergeant Zorrilla in 202104887, 202203727, and 202204460, all of which are currently open.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- According to the Office of the New York City Comptroller, as of October 12, 2022, § 87(2)(b) had not filed a notice of claim regarding this incident (Board Review 22).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Squad: 02

Investigator:	<u>JP Lozada</u>	<u>SI Jean-Paul Lozada</u>	<u>10/14/2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Alexander Opoku-Agyemang</u>	<u>IM Opoku-Agyemang</u>	<u>10/14/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date